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No. ____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

CANADIAN TRANSPORT COMPANY,
CLIPPER MARITIME CO., LTD.
AND ULTRAOCEAN, S.A.,

Petitioners,

v.

HERCULES CARRIERS, INC.,
AS OWNER OF THE M/V SUMMIT VENTURE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether *Robins Dry Dock and Repair Co.* v. *Flint*, 275 U.S. 303, 48 S.Ct. 134, 72 L.Ed 290 (1927) and subsequent circuit court decisions, including the Eleventh Circuit decision in this case, should preclude recovery for economic loss where no physical damage has occurred to plaintiff's property.

PARTIES BELOW

Canadian Transport Company*
Clipper Maritime Co. Ltd.*
Ultraocean, S.A.*
I. S. Joseph Company, Inc.
Sabine Towing & Transportation Company
Hercules Carriers, Inc.**

*Petitioners in this Court.
**Respondent in this Court.

Petitioner, Clipper Maritime Co. Ltd., is a subsidiary of Armada Shipping, APS (Denmark).

Petitioner, Canadian Transport Company is a subsidiary of MacMillan Bloedel, Limited (Canada).

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS OF THE LOWER COURTS

The petition adequately sets forth the opinions of the lower courts.

JURISDICTION

The petition adequately sets forth the jurisdictional requirements.

STATEMENT OF THE CASE

A. District Court Jurisdiction

Jurisdiction of the United States District Court, Middle District of Florida, was predicated upon Article III, Section 2, United States Constitution, 28 U.S.C. § 1333, and 46 U.S.C.§ 181 *et. seq.*

B. Facts And Procedural History

On the morning of May 9, 1980, the M/V Summit Venture collided with the Sunshine Skyway Bridge. As a result of this accident, a portion of the bridge collapsed into Tampa Bay.

Respondent, Hercules Carriers, Inc., as owner of the vessel, filed a complaint for exoneration from or limitation of liability resulting from the collision. Petitioners and other claimants answered and filed claims in the proceeding.

Petitioners, none of whose property had been damaged, sought damages for delays in vessel or terminal operations resulting from the closure of the ship channel.

In the district court, Respondent moved to dismiss Petitioners' claims for failure to state a claim upon which relief could be granted. The motion was granted by the United States District Court for the Middle District of Florida, Tampa Division, which relied upon the decision in *Kingston Shipping Co.* v. *Roberts*, 667 F.2d 34 (11th Cir. 1982), *cert. denied sub nom. ABC Containerline N.V.* v. *Kingston Shipping Co.* 458 U.S. 1108, 102 S.Ct. 3487, 73 L.Ed.2d 1369 (1982). The district court properly adhered to the *Kingston Shipping Co.* decision, which was based on facts virtually identical to the present case: the closure of the ship channel leading into Tampa Bay. In this case and in *Kingston Shipping Co.* it was held that there is no cause of action for negligent acts which cause economic loss without physical contact. There has been no claim that Respondents intentionally interfered with Petitioners' economic enterprises.

Petitioners filed an appeal with the Eleventh Circuit from the district court decision. A three judge panel affirmed the district court decision, 720 F.2d 1201. On

rehearing *en banc* the district court decision was again affirmed by a divided court, 728 F.2d 1359. A petition for a second rehearing *en banc* was denied on May 17, 1984.

REASONS FOR DENYING THE WRIT

Robins Dry Dock & Repair Company v. *Flint*, 275 U.S. 303, 48 S.Ct. 134, 72 L.Ed. 290 (1927), Has Been Properly Interpreted to Stand For The Proposition That There Is No Cause Of Action Or Recovery For Negligent Interference Of Contract Without Physical Impact.

The circuit courts that have interpreted *Robins* as barring recovery for those who have suffered economic loss without physical impact are correct.

As stated by Justice Holmes:

> [N]o authority need be cited to show that, *as a general rule*, at least, a tort to the person or property of one man does not make the tort-feasor liable to another merely because the injured person was under a contract with that other unknown to the doer of the wrong. . . . The law does not spread its protection so far.

Robins Dry Dock & Repair Co. v. *Flint*, 275 U.S. 303, 309, 48 S.Ct. 134, 135, 72 L.Ed.2d 290, ____ (1927) (emphasis added).

Petitioners' claims are exactly the same as Justice Holmes was describing. Petitioners were neither the owners of the bridge, nor the owners of the channel. In *Kingston Shipping Co., Inc.* v. *Roberts*, 667 F.2d 34 (11th Cir. 1982), *cert. denied sub nom. ABC Containerline N.V.* v. *Kingston Shipping Co.*, 458 U.S. 1108, 102 S.Ct. 3487, 79 L.Ed.2d 1369 (1982), the court, quoting the above language from the *Robins* opinion, correctly stated:

> *Robins* made clear that a party may not recover for economic losses not associated with physical damage.

667 F.2d at 35.

The *Robins* rule has weathered the test of time. Certiorari was denied in 1982 in *Kingston Shipping Co.*, which had been brought to this Court on the very same issue. Nothing has changed since 1982. There is no need for review at this time.

Even If *Robins* Is Not Applied, The Writ Should Be Denied, Since There Is Uniformity In The Circuits Concurring With The Decision Of The Eleventh Circuit In This Case.

In *Petitions of Kinsman Transit Co.*, 388 F.2d 821 (2nd Cir. 1968), the court was presented with a situation very similar to the present case. In *Kinsman* a navigable river was closed to traffic due to a downed bridge. Judge Kaufman, writing for the court, was hesitant to apply *Robins*. Instead, Judge Kaufman based his decision on the doctrines of "foreseeability," "duty," "proximate cause," and "remoteness." Using the above mentioned doctrines, Judge Kaufman found as a matter of law that no cause of action exists for those whose claims are based solely on being delayed due to the closure of a navigable waterway. The *Kinsman* court stated:

> The instant claims occurred ony because the downed bridge made it impossible to move traffic along the river. Under all the circumstances of this case, we hold that the connection between the defendants' negligence and the claimants' damages is too tenuous and remote to permit recovery.

Id. at 825.

The circuit courts that have been faced with the question Petitioners now present to this Court have uniformly held that there is no cause of action for damages arising

out of the blockage of a channel, where no physical contact is asserted. *Akron Corp.* v. *M.V. CANTIGNY*, 706 F.2d 151 (5th Cir. 1983), *Dick Meyers Towing Service, Inc.* v. *U.S.*, 577 F.2d 1023 (5th Cir. 1978); *Kingston Shipping Co.* v. *Roberts*, 667 F.2d 34 (11th Cir. 1982), *cert. denied sub nom. ABC Containerline N.V.* v. *Kingston Shipping Co.*,456 U.S. 1108, 102 S.C5. 3487, 73 L.Ed 1369 (1982), *Petition of Kinsman Transit Company*. 388 F.2d 281 (2nd Cir. 1968); *Marine Navigation Sulphur Carriers, Inc.* v. *Lone Star Industries, Inc.*, 638 F.2d 700 (4th Cir. 1981), *State of La. ex rel. Guste* v. *M.V. TESTBANK*, 728 F.2d 748 (5th Cir. 1984); and *Hercules Carriers, Inc.* v. *State of Florida*, 720 F.2d 1203 (11th Cir. 1983).

There is no conflict of law regarding the questions being presented in Petitioners' brief. The law as set forth by the Eleventh Circuit in this case is consistant with the law of all the other circuits.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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